
The Environmental Law Group, PLLC

Law and Science for the Environment

5803 Staples Mill Road, Richmond, Virginia 23228

Mail to: P.O. Box 6236

Richmond, Virginia 23230

David S. Bailey (VA & DC)

General Manager & Senior Counsel

Tammy L. Belinsky (VA) (Associate Counsel)

Jeter M. Watson (VA) (of Counsel)

Telephone: 804-433-1980

Toll Free: 888-831-0659

Facsimile: 804-433-1981

dbailey@envirolawva.com

April 1, 2011

Chad A. Mooney, Esq.

Petty, Livingston, Dawson & Richards

P.O. Box 1080

Lynchburg, Virginia 24505

Re: Alex and Kaia Kristensen

Dear Mr. Mooney:

I have filed expert designations in the above case. I am still getting the final medical designations and they will follow. Several of the experts refer to medical records and scientific and medical literature. I believe that your office has copies of all the designated scientific and medical literature as well as copies of all the medical records. If you are missing anything or need new copies please advise and we will be glad to provide same.

I have some doubt whether the Rooftop person is an expert or just a fact witness, but have listed him as an expert as a precautionary measure. We will be using Drs. Frye, Poehailos and Andrew C. Elgort (both at Poehailos, Dupont & Associates) as treating doctors.

Please call my office if you have any questions.

Yours truly,



David S. Bailey

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
AT CHARLOTTESVILLE

KAIA VICTORIA KRISTENSEN, a minor by)	
next friend, SUSAN LEIGH KRISTENSEN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:09-CV-00084
)	Consolidated with 3:09-CV-00085
WILLIAM DAVID SPOTNITZ and DENISE)	
CONSTANCE SCHAIN,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' JOINT DESIGNATION OF EXPERT WITNESSES
DR LEONARD VANCE AND DARREN GIACOLOME AND
NOTICE OF USE OF TREATING PHYSICIANS**

Plaintiffs, by counsel hereby serve notice of the filing of joint expert designations for Dr. Leonard Vance and Darren Giacolome, as well as notice of the use of Drs. Frye, Poehailos and Elgort as treating physicians in the above styled case. Attached to this notice are the designations and expert materials for each expert. Medical records of the treating physicians have been provided in previous discovery.

Respectfully submitted,

Kaia Kristensen and Alex Kristensen
By counsel

/S/

David S. Bailey (Va. Bar 24940; DC Bar 455518)
Environmental Law Group, PLLC
P.O. Box 6236
Richmond, Virginia 23230
TEL: 804-433-1980
FAX: 804-433-1981
Email: dsbailey@igc.org

Tammy L. Belinsky, Esquire (VA 43424)
Environmental Law Group
9544 Pine Forest Road
Copper Hill, Virginia 24079
TEL: 540-929-4222
FAX: 540-929-9195
Email: tambel@hughes.net

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2011 I electronically filed Plaintiff's notice of expert filing along with scanned expert reports and other required expert materials with the Clerk of the Western District Federal Court, Charlottesville, Virginia using the CM/ECF system.

/S/ _____
David S. Bailey

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
AT CHARLOTTESVILLE

KAIA VICTORIA KRISTENSEN, a minor by)
next friend, SUSAN LEIGH KRISTENSEN,)
)
Plaintiff,)
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WILLIAM DAVID SPOTNITZ and DENISE)
CONSTANCE SCHAIN,)
)
Defendants.)
)
)

Case No. 3:09-CV-00084
Consolidated with 3:09-CV-00085

**PLAINTIFFS' JOINT DESIGNATION OF EXPERT WITNESS
ROOF TOP SERVICES**

Plaintiffs hereby designate, to the extent an expert designation is required, the General Manager of Roof Top Services, 4090 Dickerson Road, Charlottesville, Virginia 22911-5803, phone/fax 434-975-2051. Darren Giacolome will testify as an expert in roof inspection and repair at the subject residence at 560 Blumfield Road, including the repair of leaking skylights. Mr. Giacolome was the person at Roof Top Services who observed the repairs, did the estimate for repairs at the home, and supervised the repairs to the skylights. Mr. Giacolome has no resume, but has been employed in the roofing field for many years and has been employed by and in the management of Roof Top Services for over a decade.


Mr. Giacolome has no expert report and, at the time of designation, has not indicated any charge for his time in this case. His testimony is based on his estimate of the repair of the home, his observations and supervision of the work, which he will state was necessary, was done properly and that the skylights were professionally repaired for the costs indicated in his billing statements, which are included.

Mr. Giacolome will testify generally about roof repair and skylight issues as relates to the work done at 560 Blumfield Road, that skylights leak occasionally but can be reasonably repaired and were repaired in this case for less than \$1,000. Mr. Giacolome will state that his company has received no complaints that the skylight repairs were not satisfactory, the work done was similar to work performed on other such situations, and he would not have performed the repairs if he thought it was not feasible and reasonable to do so. Mr. Giacolome will further testify that he has no knowledge of why the leaking skylights were not repaired at an earlier date, and that after doing such repairs, there was nothing found during the repair that would prohibited earlier repairs.

Mr. Giacolome will render his opinion to a degree of certainty in his field and to a degree of more likely than not.

Respectfully submitted,

Kaia Kristensen and Alex Kristensen
By counsel



David S. Bailey (Va. Bar 24940; DC Bar 455518)
Environmental Law Group, PLLC
P.O. Box 6236
Richmond, Virginia 23230
TEL: 804-433-1980
FAX: 804-433-1981
Email: dbailey@envirolawva.com

Tammy L. Belinsky, Esquire (VA 43424)
Environmental Law Group
9544 Pine Forest Road
Copper Hill, Virginia 24079
TEL: 540-929-4222
FAX: 540-929-9195

Email: tambel@hughes.net

CERTIFICATE OF SERVICE

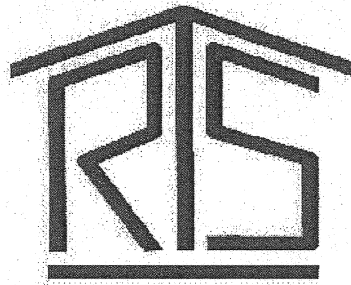
I hereby certify that on March ____, 2011, I mailed a copy of the foregoing designation of expert witness Roof Top Services to counsel for Defendants William Spotnitz and Denise Schain, G. Edgar Dawson, Esq., Petty, Livingston, Dawson & Richards, 725 Church Street, Suite 1200, P.O. Box 1080, Lynchburg, Virginia 24505.



David S. Bailey

Welcome to Roof Top Services of
Charlottesville, VA

[Home](#) [Map & Directions](#) [What We Do](#) [Pictures](#) [References](#) [About Us](#) [Community](#)
[Contact Us](#)



For All Your Roofing Needs...

...look to *Roof Top Services*
of
Charlottesville, Virginia

Our business is dedicated to offering you the best in
products and services.

With decades of roofing experience, we are certain we can
provide you with the best service, support and advice for your
roofing requirements.

Commercial - Residential Free Estimates

Our expertise includes:

- New Construction and Roof Replacements
 - Shingles
- Metal Roofing - Standing Seam
- Rubber Roofing
- Slate and Tile
- Wood Shakes and Shingles
- Custom Gutter Systems and Metal Fabrication
- Roofing Repairs and Maintenance

We are a **Certified GAF Master Elite Roofing Contractor.**

Find out what this means for your roof at
GAF Corporation's Website

Member of:
Better Business Bureau
National Roofing Contractors Association
Blue Ridge Home Builders Association
Shenandoah Valley Builders Association

We look forward to working with you.

Please Contact Us:

Roof Top Services, LLC
4090 Dickerson Rd
Charlottesville, Virginia
22911-5803

(our Shenandoah Valley Office)
P.O. Box 1142
Staunton, Virginia
24402-1142

Phone/Fax: (434) 975-2051

Phone: (540) 569-0406

e-mail: info@rooftopservicesva.com

Map & Directions

Created with 1&1 WebsiteBuilder

Roof Top Services
750 Harris Street
Suite 103
Charlottesville, VA 22903
Phone/Fax: 434-975-2051

Invoice No. _____
Date Ordered: 7-30-02
Property Manager: _____
Referred by: Lee C.

Billing Address	Job Name
<u>Denise Spotnitz</u>	<u>560 Bloomfield Rd</u>
<u>4236 S.W. 104 Ter</u>	<u>Ivy 296-3588</u>
<u>Gainesville, Fla 32608</u>	<u>Bill ^W 352-846-0364 215-806-2594</u>
Phone: <u>352-375-8627</u>	Previously Repaired: <input type="checkbox"/> Yes <input type="checkbox"/> No
	When: _____

Repairs Required: Remove Pan from behind (3) skylights
install ice shield and shingle behind skylights
- extend 4" drain pipe on rear w/ 2x3 (B) elbow

Area Repaired

<input type="checkbox"/> Shingles	<input type="checkbox"/> Skylight	<input type="checkbox"/> Membrane
<input type="checkbox"/> Slate	<input type="checkbox"/> Chimney	<input type="checkbox"/>
<input type="checkbox"/> Cedar Shakes	<input type="checkbox"/> Coving	<input type="checkbox"/>
<input type="checkbox"/> Standing Seam	<input type="checkbox"/> Ridge Caps	<input type="checkbox"/>
<input type="checkbox"/> Valley Flashing	<input type="checkbox"/> Ridge Vent	<input type="checkbox"/>
<input type="checkbox"/> Drip Flashing	<input type="checkbox"/> Vent Pipe	<input type="checkbox"/>
<input type="checkbox"/> Apron Flashing	<input type="checkbox"/> Ridge Caps Color	Size <input type="checkbox"/>
<input type="checkbox"/> Counter Flashing	<input type="checkbox"/> Gutter Color	Size <input type="checkbox"/>
<input type="checkbox"/> Cricket	<input type="checkbox"/> Downspout Color	Size <input type="checkbox"/>
Is Job Complete <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Scupper Color	Size <input type="checkbox"/>
Take Picture <input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/> Collector box Color	Size <input type="checkbox"/>

Repairs Completed:

- | | |
|---|---|
| <input type="checkbox"/> Inspected interior to determine area leaking. | <input type="checkbox"/> Replaced () missing shingles. |
| <input type="checkbox"/> Made temporary repairs using plastic roof cement | <input type="checkbox"/> Recouped loose shingles and sealed. |
| <input type="checkbox"/> Made temporary repairs using ice shield membrane | <input type="checkbox"/> Repaired using fabric and roof cement. |
| <input type="checkbox"/> Made temporary repairs using aluminum flashing. | <input type="checkbox"/> Removed debris associated with repair. |
| <input type="checkbox"/> Removed temporary repairs. | <input type="checkbox"/> Sealed using a polyurethane sealant. |
| <input type="checkbox"/> Staged job. | <input type="checkbox"/> Replaced () missing slate. |
| <input type="checkbox"/> | <input type="checkbox"/> Replaced () cedar shakes. |

Date Worked: 8-1-02Day of Week: Thursday

Mechanic: <u>Frank</u>	Start Time <u>12:30</u>	Stop Time <u>12:45</u>	Total Hours <u>2</u>
Laborer: _____	Start Time _____	Stop Time _____	Total Hours _____
Laborer: _____	Start Time _____	Stop Time _____	Total Hours _____

I hereby acknowledge the satisfactory completion of the above described work.

Signature: Frank Wanda

Print Name and Title: _____

Labor: \$ _____

Material: \$ _____

Total: \$ 6.800

BATES No.

475\$ 775

Roof Top Services, LLC

750 Harris Street, Suite 103
 Charlottesville, VA 22903
 975-2051 Office/Fax

Invoice

Date	Invoice #
8/5/2002	3062

Bill To

Denise Spotnitz
 4236 S. W. 104 Terrace
 Gainesville, FL 32608

9/13 1:18 LM
 9/15 called said sending pyant inmed.

P.O. No.	Terms
	Due on receipt

Description	Amount
560 Bloomfield Road, Ivy, VA Amount due for removing pan from behind 3 skylights, installing ice shield membrane and new shingles and extending 4" drain pipe on rear with 2x3 B elbow.	725.00

WILLIAM D. SPOTNITZ, MD.
 DENISE C. SCHAIN, MD.
 4236 S.W. 104TH TERR.
 GAINESVILLE, FL 32608

5377

Date Sept 15, 2002 53-1/510 VA 1715

Pay to the Order of Roof Top Services \$ 725.00 /xx
Seven hundred twenty-five dollars and
00/xx

Bank of America

ACH/R/T 051000017

For Denise Schain

⑆051000017⑆ 000025244554⑆ 5377

Total

\$725.00

BATES No 476

CARDINAL FAMILY MEDICAL CENTER

ELIZABETH FRYE, M.D.

Board Certified Family Practice Physician

2119 Berkmar Drive
Suite 101
Charlottesville, Virginia 22901

Telephone: (804) 973-5539
Fax: (804) 973-8910

May 6, 2002

Re: Kristensen Family

To Whom It May Concern:

The Kristensen Family, including Stein, Susan, A■■■, and K■■■, are patients of mine. After evaluation from the Environmental Protection Agency, this family's house was found to be infected with *Aspergillus* and *Stachybotrys Chartarum*. The family requested that I write a letter confirming that they have had multiple illnesses throughout this year possibly related to the above organisms. A■■■ and K■■■ who are 2-1/2 years old and 8 months old, respectively, have had multiple upper respiratory infections including bronchitis, ear infections, chronic cough and congestion. In addition, both Stein and Susan have had similar problems as well, including sore throat, upper respiratory infections, chronic sinus congestion, and irritations of their upper respiratory tracts. It has been shown in previous studies that the *Aspergillus* species can cause irritation of the mucous membrane to the eyes and respiratory system. In addition, it may cause itching, burning and paresthesias of the skin as well as dizziness, disorientation and diminished reflex time. Some of the toxins from *Aspergillus* can also infect the urinary system, reproductive system, and immune system. In addition, *Stachybotrys* has been shown to cause chronic cough, rhinitis, and burning sensation of the mouth and nasal passages. The combination of *Stachybotrys* plus *Aspergillo*ses has also been shown to be extremely toxic, even causing a death in one infant. They formally have evacuated the house and also have left behind their furniture, personal articles including photographs, documents and passports, and are in the process of disinfecting their clothing. They have gone through tremendous upheaval in their lives because of this problem. They are currently not reimbursed by their insurance nor are they receiving help from the people they rented the house from. In addition, it has been found that the paint on the walls contains high amount of lead. Although Susan, A■■■, and K■■■ lead levels are normal, K■■■ lead level is elevated (4).

I do believe that the family's recent problems with chronic infections, sore throats, bronchitis, nasal irritation, etc., are related to the *Aspergillus* and *Stachybotrys* contamination of their house. We are contacting a specialist in this area, Dr Dearborn, in Ohio for evaluation of the children as they continue with chronic cough and congestion. The family has noticed significant improvement in their symptoms since leaving the house. Susan has had alleviation of her chronic sore throat and chronic congestion since being away from the home. When she does return to the home to pack her things and collect clothing, she has noticed a recurrence of her symptoms within 30 minutes of entering the house.

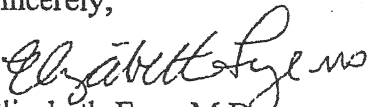
0004

E. Frye

Re: Kristensen Family
Date: May 6, 2002
Page 2

Please feel free to contact me concerning their case. It is most unfortunate that this family does not have any compensation from their insurance company nor the homeowners for their chronic problems and especially for having to "start over" in terms of buying new furniture and personal items.

Sincerely,


Elizabeth Frye, M.D.

EMF/cliE7

CARDINAL FAMILY MEDICAL CENTER

ELIZABETH FRYE, M.D.

Board Certified Family Practice Physician

2119 Berkmar Drive
Suite 101
Charlottesville, Virginia 22901Telephone (434) 973-5539
Fax (434) 973-8910Name Kaia Kristensen Date 4/15/02

Address _____

BND#BFF6402642

B Please note that after inspection of the Kristensen's house by the EPA that the walls have been painted with lead paint. This is extremely dangerous with 2 small children at home, as lead can be toxic to this age group. We have drawn lead levels. They wall must be repainted to ensure safety.

☐ Dispense As Written☐ Voluntary Formulary Permitted☐ Label

Refill _____ Times

_____, M.D.

Elizabeth Frye

0006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
AT CHARLOTTESVILLE

KAIA VICTORIA KRISTENSEN, a minor by)	
next friend, SUSAN LEIGH KRISTENSEN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:09-CV-00084
)	Consolidated with 3:09-CV-00085
WILLIAM DAVID SPOTNITZ and DENISE)	
CONSTANCE SCHAIN,)	
)	
Defendants.)	
_____)	

PLAINTIFFS' EXPERT DESIGNATION OF DR. LEONARD VANCE

Plaintiffs, by counsel, hereby designate the following person as an expert in this case:

Dr. R. Leonard Vance, P.E., CIH, CSP, CHMM. Dr. Vance will testify as an expert in industrial hygiene, mold contamination and remediation, and professional engineering. His resume is enclosed.

Dr. Vance's opinions in this case are based on his experience and expertise in the fields of industrial hygiene, which he practices and teaches at the VCU Medical Center, and his training and experience as a professional engineer. Dr. Vance relies on the depositions, photos, mold investigative reports, other expert reports and the current scientific literature to base his opinions.

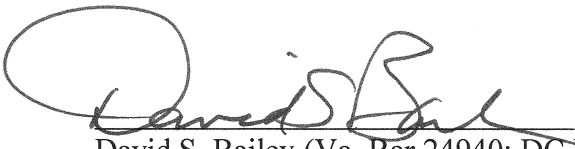
Dr. Vance will opine that long term chronic water leaks that are not corrected will rapidly lead to growth of molds, and in particular, with wet drywall, the growth of the black mold, *Stachybotrys*. He will opine that the evidence shows that long term water leaks from ceiling skylights, long term odor problems, visible mold and measured mold all occurred in the residence where the Plaintiffs resided. Dr. Vance will describe the general growth and

reproduction of indoor molds studied in his field of industrial hygiene, their dispersal, and availability to human exposures. Dr. Vance will affirm that the established scientific literature demonstrates that excessive indoor mold growths can produce mycotoxins, mold spores and mold fragments, all microscopic in size and invisible to the naked eye, which can be inhaled by persons living inside such homes. Dr. Vance will opine that air samples rarely adequately describe, capture or evaluate actual air mold spores counts as such samples are, at best, only a “snap shot in time” and the best measure of the risk of mold exposure is the observed visible mold and conditions known to promote mold growths, all observed in the Plaintiffs’ residence.

For all these reasons, Dr. Vance will opine that the conditions in the Plaintiffs’ residence demonstrated excessive mold contamination and excessive moisture conditions that could lead to adverse human health effects, including allergic reactions and irritation typical of the symptoms and healths affects observed in the plaintiffs. Dr. Vance’s report is attached hereto, and his opinions will be rendered to a degree of certainty in his field of industrial hygiene and engineering and to a degree of more probable than not. A list of scientific documents that Dr. Vance relies upon is enclosed as well.

Respectfully submitted,

Kaia Kristensen and Alex Kristensen
By counsel

A handwritten signature in black ink, appearing to read "David S. Bailey". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping underline.

David S. Bailey (Va. Bar 24940; DC Bar 455518)
Environmental Law Group, PLLC
P.O. Box 6236
Richmond, Virginia 23230
TEL: 804-433-1980
FAX: 804-433-1981
Email: dbailey@envirolawva.com

Tammy L. Belinsky, Esquire (VA 43424)
Environmental Law Group
9544 Pine Forest Road
Copper Hill, Virginia 24079
TEL: 540-929-4222
FAX: 540-929-9195
Email: tambel@hughes.net

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2011 I mailed a copy of the foregoing designation of expert witness Leonard Vance to counsel for Defendants William Spotnitz and Denise Schain, G. Edgar Dawson, Esq., Petty, Livingston, Dawson & Richards, 725 Church Street, Suite 1200, P.O. Box 1080, Lynchburg, Virginia 24505.



David S. Bailey

R. Leonard Vance, Ph.D., PE, CIH
Center for Environmental Studies
Virginia Commonwealth University
1000 West Cary St., Rm. 220E
Box 843050
Richmond, Va. 23284-3050
(804) 628-2513; (804) 690-0779
e-mail: vance@vcu.edu

March 26, 2011

David Bailey, Esq.
The Environmental Law Group
5803 Staples Mill Road
Richmond, Virginia 23228

Re: Kristensen v. Spotnitz, Case No. 3:09-cv-00085
United States District Court, Charlottesville, Virginia

Dear Mr. Bailey:

My name is R. Leonard Vance. I hold a Ph.D in Chemistry from the University of Virginia, a BS in Chemistry from Virginia Tech and a JD degree from the University of Richmond,. I am licensed by the Commonwealth of Virginia as a professional engineer. I am also certified by the corresponding national boards as a Certified Industrial Hygienist (CIH), a Certified Safety Professional(CSP), and a Certified Hazardous Materials Manager (CHMM). I also hold licenses in asbestos management and the possession and use of certain highly regulated chemicals not germane to this case. Relevant to mold and mold remediation, I teach a graduate course entitled Principles of Environmental Health that is required for graduation from the VCU Master of Public Health Program. I also teach a year long graduate course in industrial hygiene and a course entitled Environmental Chemistry. For over ten years, I performed mold investigations for the City of Richmond, and consulted with the City on mold programs and remediation. I have served as a mold consultant for the Richmond City Circuit, District, and J&D Courts, the Colonial Heights, Va., Circuit Court, and for school systems in the Cities of Richmond and Manassas, and for Botetourt County. I have directed and taught in a mold training program for schools during the summer in a dozen different locations around Virginia, sponsored jointly by USEPA, the Virginia Department of Health and the Virginia Department of Education. I also perform private mold consulting and I am a principal and officer in a mold laboratory accredited by the American Industrial Hygiene Association.

I have previously testified in Court for the parents of the named children in this case, was admitted as an expert in that case, and reviewed all documents in preparation for the prior case as well as in this case. Documents reviewed include all mold test results, photographs, depositions, discovery documents (in the prior case), and other expert reports (in the prior case).

Mr. Bailey
Kristensen v. Spotnitz
March 26, 2011
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My opinions in this case relate to the presence of mold in the subject home, odors, the excessive water leaks and moisture conditions, which are now referred to as “damp indoor spaces;” the nature and types of molds found in the home and the potential health risks they represent, especially to children under the age of six years; and the general scientific literature at the time of the occurrence and as later developed in mold research on environmental and potential adverse health effects.

I hold the opinion, based on the photos, mold test results and the depositions of the parties, that the residence at 560 Blumfield Road was contaminated with excessive levels of mold and moisture conditions. Excessive levels of mold begin with “visible mold” on walls and interior areas. Under established federal guidance from EPA, see, *e.g.*, Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001 (March 2001), if visible mold is present, then remediation and corrective action should begin, and sampling may be entirely unnecessary. (P. 25). It is enough that visible mold be present, especially if such mold, as here, is growing on interior walls as opposed to a common environment such as a shower stall. This is particularly important, again as here, when musty or damp odors are reported by the building occupants. These odors, which are fairly distinctive as to damp conditions and mold growth, are produced by mold proliferation and rotting building materials; the odors are generally caused by volatile organic compounds (VOCs) produced by the molds. Centers for Disease Control (CDC), Mold Prevention Strategies and Possible Health Effects in the Aftermath of Hurricanes and Major Floods, 2006, p. 3; EPA at 43.

When excessive moisture conditions accumulate in homes, mold growth will occur. EPA at 2; CDC, p. 4. Under moist conditions, mold growth is not limited to what is visible on the interior walls, but mold may be growing on hidden surfaces such as the backs of drywall, wall paper, paneling, carpet, or a plaster wall. In most cases of excessive water intrusion, as here, mold growth may occur in many different locations and produce elevated levels of mold spores and fragments in the air, where such mold can be inhaled. EPA at 8. Inhalation is the primary means of mold health injury except in limited occupational exposures.

Molds are allergenic, whether dead or alive, and some molds may be toxic. EPA at 17. All molds have the potential to cause health effects, and molds produce allergens, irritants, and in some cases toxins. EPA at 40, CDC, generally. It is well established that mold and the related moisture exposure conditions can cause irritation of the skin, eyes, throat and upper respiratory tract as well as allergic reactions. EPA at 40, 41. Although all molds are allergic, some types of mold have long been associated with adverse human health effects inside homes. Their presence is an outgrowth of long term moisture conditions. One particular mold, *Stachybotrys*, is known to be a slow growing organism which requires continuous or frequent water intrusion in order to survive. In this case, the occurrence of *Stachybotrys* on interior walls demonstrates a long term water problem, not a single or even an occasional water intrusion issue. In addition, the presence

Mr. Bailey
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March 26, 2011
Page 3

of *Aspergillus* and *Pencillium*, other molds of human health concern, also indicates an excessive water environment.

In addition to the water issues, levels of mold identified by air sampling also indicate excessive mold growths in the indoor air at the time of sampling. This is important because, compared to outside air, it indicates proof that mold is growing inside the home. A conventional way of evaluating indoor air quality involves the collection of mold samples both inside a building and outdoors next to the building. The presence of mold inside the building that is not present outside demonstrates indoor production of the mold. And the presence of significantly higher concentrations of a mold inside than those of the same mold outside is also taken as an indicator of the presence of an indoor source of contamination.

Using all mold testing available from the air, swabs and on the surface (tape lifts), I conclude that the subject home was contaminated with excessive levels of mold which were not normal and contained molds known to be allergenic and to have adverse human health effects. Further, because of the odors reported, the excessive moisture conditions in combination with mold and the reactions of the plaintiffs themselves, there were clearly VOCs in the air inside the home in sufficient quantities to cause irritation.

As to mold remediation and family property, including the children's belongings, I hold the view that there was sufficient moisture contamination to require professional cleaning of this property. That said, the cost of such cleaning and the fact that there were sick children in the home, which denotes a more careful and higher standard of cleaning, warranted disposal of the belongings. It would simply have been too difficult and expensive to save and/or make safe a lot of used family belongings, particularly so for the children's items. All of those had to go.

In addition to the documents cited herein, I also rely on and will cite from passages contained in the American Conference of Governmental Industrial Hygienists', Bioaersols, Assessment and Control, (1999) and the Institute of Inspection, Cleaning and Restoration Certification, IICRC Standard and Reference Guide for Professional Water (1999) and Mold (2003) Damage Restoration, S500 and S520, both adopted by Virginia as Professional Standards for Remediation; Institute of Medicine of the National Academies, Damp Indoor Spaces and Health, National Academies Press, Washington, DC 2004; and the World Health Organization treatise on damp indoor spaces, Guidelines for Indoor Air Quality: Dampness and Mould, 2009. Virginia, by statute¹, has adopted most of these documents as authoritative sources of guidance in the field of mold evaluation and remediation.

My opinions are rendered to a reasonable degree of certainty in my professional fields and to a degree of more likely than not.

Mr. Bailey
Kristensen v. Spotnitz
March 26, 2011
Page 4

Respectfully submitted,

R Leonard Vance

R. Leonard Vance, Ph.D., PE, CIH
Associate Professor

1. § 8.01-226.12, Code of Virginia: "Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the United States Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

ROBERT LEONARD VANCE, Ph.D., JD, PE, CIH, CSP, CHMM

Associate Professor
Center for Environmental Studies
Box 843050
1000 West Cary St., Rm. 220E
Virginia Commonwealth University
Richmond, Va. 23284-3050
(804) 828-7202; (804) 628-2513
vance@vcu.edu
<http://www.vcu.edu/cesweb/>

Associate Professor
Center for Environmental Studies
Virginia Commonwealth University

Professional Engineer (PE)
Certified Industrial Hygienist (CIH)
Certified Safety Professional (CSP)
Attorney at Law

COLLEGIATE TRAINING

Institution	Degree	Year	Major
Virginia Tech	B.S.	1962	Chemistry
University of Virginia	Ph.D.	1969	Inorganic Chemistry
University of Richmond	J.D.	1975	Law

PROFESSIONAL ORGANIZATIONS:

American & Virginia Public Health Associations
National & Virginia Society of Professional Engineers
American Academy of Industrial Hygiene;
American Chemical Society; Sigma Xi;
American Industrial Hygiene Association
American Conference of Governmental Industrial Hygienists
American Society of Safety Engineers
American Soc. of Heating, Refrig., & Air Cond. Engineers (ASHRAE)
American Institute of Hazardous Materials Managers
American and Richmond Bar Associations;
Virginia State Bar

PROFESSIONAL LICENSES:

Licensed to practice law in Virginia;	# 15305
Licensed to practice engineering in Va.,	# 0402029662
Board certifications: Industrial Hygiene;	# 4155
Safety;	# 12407
Hazardous Materials Management	# 8699

PAST MEMBER AND CHAIR: Virginia Board for Asbestos, Lead & Home Inspectors;
Virginia Department of Professional & Occupational Regulation

Past Member: Board of Governors, Environmental Law Section,
Virginia State Bar

OCCUPATIONAL HISTORY:

1986 through present

Associate Professor, Center for Environmental Studies (8/2010 – present); Dept. of
Epidemiology (Preventive Medicine until 1/1/2005) & Community Health (86-2010);
Virginia Commonwealth University

1982 to 1986

Director of Health Standards
U.S. Occupational Safety and Health Administration

1976 to 1982

Assistant Attorney General of Virginia representing State Health Department

Chemistry Department Faculty:

Virginia Commonwealth University; 1970 to 1981
Danville Community College; 1968 to 1970

July, 1986 to present: Associate Professor, Center for Environmental Studies (August, 2010 – present); Department of Epidemiology (Preventive Medicine until 1/1/2005) & Community Health (1986 – 2010), Virginia Commonwealth University. Teach graduate courses in occupational and environmental health and safety, public health law, environmental law, industrial hygiene, and solid waste management. Graduate program director 2006-7. Advise graduate students in Master of Science (Env'l Studies) and Master of Public Health (MPH) programs. Teach continuing education courses in lead, asbestos, hazardous waste management with VCU Center for Environmental Studies. Also hold collateral appointments in VCU Department of Epidemiology and in Department of Chemical Engineering and actively teach in both programs.

1982 to 1986: As Director of Health Standards, prepared occupational health standards governing toxic substances for promulgation by OSHA. Developed priorities for Assistant Secretary of Labor for Occupational Safety and Health for regulation of workplace exposure to toxic chemicals. Hired and managed scientists, engineers, industrial hygienists, and physicians for OSHA health standards projects. Served as OSHA representative on various federal interagency committees, such as Federal Asbestos Task Force and IRMC carcinogen, risk assessment, and formaldehyde committees. Delivered Congressional testimony, public hearing presentations, and speeches to national and international public health bodies on behalf of OSHA. Prepared for delivery to the Assistant Secretary the following specific OSHA health standards:

Access to Medical Records	Formaldehyde
Asbestos	Hazard Communication
Benzene	Laboratories
Cancer Policy	Lead
Cotton Dust	Methods of Compliance
Ethylene Dibromide	Methylenedianiline
Ethylene Oxide	Respirators
Field Sanitation	

1976 to 1982: Assistant Attorney General of Virginia representing Virginia Department of Health (VDH). Active litigator in state and federal court representing VDH in environmental and public health litigation involving solid and hazardous waste, occupational safety and health, kepone and other toxic substances, public water supplies, sewage, public health nuisances, radiation, milk and shellfish sanitation; drafted legislation and regulations in these areas. Presented testimony before the Virginia General Assembly and other legislative and regulatory bodies.

1968 to 1981: Taught general, analytical and advanced inorganic chemistry and instrumental analysis on a full (68-76) and part time (76-81) basis.

Co-author: Virginia OSHA Compliance Handbook; Government Institutes; 1992
Railroad Health and Safety; A Litigator's Guide; 1999

COMMERCIAL LABORATORY ACTIVITIES

Since 1987, have been a co-owner in four local commercial laboratories that provided environmental and occupational analytical services. These laboratories are Schneider Laboratories, Scientific Laboratories, Scientific Testing Laboratories, and Sanair Laboratory. Have served as an officer in all four laboratories and as laboratory director in one. Currently Corporate Secretary of Sanair Laboratory, an industrial hygiene analytical laboratory.

PRACTICE OF LAW

Since 1986, have maintained a small law practice, as authorized by my University Chairman and consistent with a nine month University appointment. Limited to no more than five active cases, divided between water pollution litigation and defense against OSHA enforcement actions. Litigate cases in both state and federal court, representing both plaintiffs and defendants.

FARMING ACTIVITIES

Own and operate a 100 acre family farm in Lunenburg County, Virginia, owned by my family for 90 years. Commercial activity includes beef production, sale to horse owners of orchard grass and alfalfa hay, and a Virginia licensed quail shooting preserve.

Rule 26 Disclosure for January 1, 2007 - March, 2011			
Date	CASE	Attorney	Depo/trial
2/12/2007	Richard J. Wilson v. Norfolk Southern, et al. Wayne County, MI	Chris Murphy Jeffrey Roberts	deposition
2/27/2007	Mills v. Norfolk & Portsmouth Belt Line	R. Appleton; Shawn Voyles	deposition
3/24/2007	Estate of Orland Dominy v. CSX	Kendra Smith; Robert Goggin	Deposition
5/30/2007	Kristensen v. Spotnitz; Albemarle Va C. Ct.	Stacy Reed; David Bailey	deposition
6/12/2007	Maynard v. No. So.	A. Shank & Wade Law Firm	deposition
6/26/2007	Brooks v. Dunivan	C Dowd, Carl Schwertz	deposition
10/25/2007	R. Love v. CSX	H. Bailey; David Damico	deposition
10/29/2007	Estate of Hale v. Conrail	M. Zerega, M. Torcello	deposition
11/28/2007	J. Hill v. Huntington/Prime	A. Jones; H. Leiner	deposition
12/19/2007	Hickman v. CSX	J. Turner; Wade	deposition
1/10/2008	Deviney v. Union Pacific RR	W. Lamson; C. LeNeave	deposition
5/16/2008	Denney v. ConRail, et al.	R. Sigurdson; M. Torcello	deposition
6/25/2008	Kristensen v. Spotnitz	David Bailey	trial testimony
10/1/2008	Plummer v. CSX	R. Jordan; S. Lawlor K. Alexandersen; M.	deposition
10/17/2008	Wm. Shepard v. Canadian Rail	Torcello	deposition
10/30/2008	Wm. Shepard v. Canadian Rail	Michael Torcello; Doran & Murphy	trial testimony
10/20/2008	Christian Wright v. Norfolk Southern Christian Wright v. Norfolk Southern	Randall Appleton J. Baker; R. Appleton	deposition
10/22/2008	Plummer v. CSX	Seward Lawlor; Glasser & Glasser	trial testimony

10/24/2008	Kovich v. Duluth, Winnipeg	C. LeNeave	de bene esse depositio
4/3/2009	L. Shelton v. CSX	S. Setliff, K. Smith, R. Shapiro	deposition
7/13/2009	Payne v. CSX	R. Jordan, R. Shapiro	deposition
7/20/2009	Ghysels v. CSX Transportation	K. Smith, W. Gavin	deposition
7/23/2009	Goffe v. Trent	C. Schwartz, D. Bailey	deposition
9/5/2009	Estate of Jerome Gish v. CN & Ill. Central RR	T. Peters, W. Gavin	deposition
2/23/2010	Goffe v. Trent	D. Bailey	trial testimony
4/27/2010	Edward R. Jolley, BNSF	A. Carafelli;	
7/22/2010	Brad Thompson v. Union Pacific, et al.	Bremseth Law W. Lamson, W. Gavin	deposition deposition
7/26-27/2010	Edward R. Jolley, BNSF	Bremseth Law	trial testimony
10/7/2010	McCoy v ICRR	Simmons, Browder	deposition
2/14/2011	Gibson v. Conrail	Doran & Murphy	deposition

testified for **about**

P asb, DE

P asb, DE

P asb, DE

P mold

P asb, DE

P mold

P asb, DE

P asb, DE

D lead

P asb, DE

P asb, DE

P asb, DE

P mold

P asbestos

P asb, DE

P asb, DE

P lifting

P lifting

P asbestos

P cold env.

P asb, DE

P asb, DE, radiation

P asb, DE

P mold

P asb, DE

P mold

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